

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1752

Introduced by Assembly Member Yamada

February 17, 2012

An act to amend Section 1599.1 of the Health and Safety Code, relating to health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1752, as amended, Yamada. Long-term health care facilities: bed hold: appeals.

Under existing law, residents of long-term health care facilities have certain rights, including the right to be readmitted to a facility following a hospital stay, as specified, and the right, if denied readmission by the facility, to appeal this decision.

Existing law establishes the State Health Facilities Citation Penalties Account within the Special Deposit Fund, available upon appropriation by the Legislature, for the protection of health or property of residents of long-term health care facilities.

This bill would require the State Department of Health Care Services, if readmission is ordered on appeal and the facility refuses to readmit the resident, to assess a *specified* civil penalty ~~of an unspecified amount per day~~ against the facility *each day*, until the resident is readmitted *or a maximum penalty amount is reached*. The bill would require that these penalties be deposited into the State Health Facilities Citation Penalties Account. The bill would require the department to request that the Attorney General seek injunctive relief and damages pursuant to specified provisions of law. The bill would authorize the department

to implement these provisions by means of letters, provider bulletins, or other similar instructions.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as the
2 Nursing Facility Bed Hold Protection Act of 2012.

3 SEC. 2. The Legislature finds and declares all of the following:

4 (a) The protection of residents in California's nursing facilities
5 is of paramount importance to the citizens of California.

6 (b) Sixty-four percent of California nursing facility residents
7 have all or part of their care paid for by Medi-Cal.

8 (c) Nearly 40 percent of nursing home residents are hospitalized
9 at least once during their residency.

10 (d) State and federal law guarantee that a hospitalized resident's
11 bed will be held for at least seven days if the resident elects. The
12 bed hold protects a resident's continuity of placement, ensures that
13 a decision to go to a hospital is unaffected by the risk of losing his
14 or her home, and protects residents from transfer trauma.

15 (e) Despite the bed hold requirements, nursing facilities often
16 refuse to hold a resident's bed, resulting in substantial costs to the
17 state in reimbursing acute care hospitals for administrative days
18 under Medi-Cal.

19 (f) A resident whose bed is not held may file a complaint with
20 the State Department of Public Health and request an appeal with
21 the State Department of Health Care Services.

22 (g) Even when a resident's appeal is granted and the nursing
23 facility is ordered to readmit the resident, many facilities refuse
24 to comply and do not suffer any adverse consequences.

25 (h) It is, therefore, the intent of the Legislature to enact
26 legislation that would do both of the following:

27 (1) Penalize nursing facilities that do not honor state and
28 federally required resident bed holds.

29 (2) Engage the Attorney General to consider an action to defend
30 the bed hold rights of nursing facility residents.

31 SEC. 3. Section 1599.1 of the Health and Safety Code is
32 amended to read:

1 1599.1. Written policies regarding the rights of patients shall
2 be established and shall be made available to the patient, any
3 guardian, next of kin, sponsoring agency or representative payee,
4 and the public. Those policies and procedures shall ensure that
5 each patient admitted to the facility has the following rights and
6 is notified of the following facility obligations, in addition to those
7 specified by regulation:

8 (a) The facility shall employ an adequate number of qualified
9 personnel to carry out all of the functions of the facility.

10 (b) Each patient shall show evidence of good personal hygiene
11 and be given care to prevent bedsores, and measures shall be used
12 to prevent and reduce incontinence for each patient.

13 (c) The facility shall provide food of the quality and quantity
14 to meet the patients' needs in accordance with physicians' orders.

15 (d) The facility shall provide an activity program staffed and
16 equipped to meet the needs and interests of each patient and to
17 encourage self-care and resumption of normal activities. Patients
18 shall be encouraged to participate in activities suited to their
19 individual needs.

20 (e) The facility shall be clean, sanitary, and in good repair at all
21 times.

22 (f) A nurses' call system shall be maintained in operating order
23 in all nursing units and provide visible and audible signal
24 communication between nursing personnel and patients. Extension
25 cords to each patient's bed shall be readily accessible to patients
26 at all times.

27 (g) (1) If a facility has a significant beneficial interest in an
28 ancillary health service provider or if a facility knows that an
29 ancillary health service provider has a significant beneficial interest
30 in the facility, as provided by subdivision (a) of Section 1323, or
31 if the facility has a significant beneficial interest in another facility,
32 as provided by subdivision (c) of Section 1323, the facility shall
33 disclose that interest in writing to the patient, or his or her
34 representative, and advise the patient, or his or her representative,
35 that the patient may choose to have another ancillary health service
36 provider, or facility, as the case may be, provide any supplies or
37 services ordered by a member of the medical staff of the facility.

38 (2) A facility is not required to make any disclosures required
39 by this subdivision to any patient, or his or her representative, if
40 the patient is enrolled in an organization or entity that provides or

1 arranges for the provision of health care services in exchange for
2 a prepaid capitation payment or premium.

3 (h) (1) If a resident of a long-term health care facility has been
4 hospitalized in an acute care hospital and asserts his or her rights
5 to readmission pursuant to bed hold provisions, or readmission
6 rights of either state or federal law, and the facility refuses to
7 readmit him or her, the resident may appeal the facility's refusal.
8 Appeal hearings shall be conducted by the State Department of
9 Health Care Services.

10 (2) The refusal of the facility as described in this subdivision
11 shall be treated as if it were an involuntary transfer under federal
12 law, and the rights and procedures that apply to appeals of transfers
13 and discharges of nursing facility residents shall apply to the
14 resident's appeal under this subdivision.

15 (3) If the resident appeals pursuant to this subdivision, and the
16 resident is eligible under the Medi-Cal program, the resident shall
17 remain in the hospital and the hospital may be reimbursed at the
18 administrative day rate, pending the final determination of the
19 hearing officer, unless the resident agrees to placement in another
20 facility.

21 (4) If the resident appeals pursuant to this subdivision, and the
22 resident is not eligible under the Medi-Cal program, the resident
23 shall remain in the hospital if other payment is available, pending
24 the final determination of the hearing officer, unless the resident
25 agrees to placement in another facility.

26 (5) If the resident is not eligible for participation in the Medi-Cal
27 program and has no other source of payment, the hearing and final
28 determination shall be made within 48 hours.

29 (6) If readmission is ordered on appeal and the facility refuses
30 to readmit the resident after it receives the decision, the State
31 Department of Health Care Services shall provide for the resident's
32 readmission. The department shall assess a civil penalty of
33 ~~_____dollars (\$_____)~~ *per day five hundred dollars (\$500) per day,*
34 *and the amount of the penalty shall increase by five hundred*
35 *dollars (\$500) each subsequent day until it reaches five thousand*
36 *dollars (\$5,000) on the 10th day. Thereafter, the penalty amount*
37 *shall be five thousand dollars (\$5,000) per day, until the total*
38 *amount assessed is one hundred thousand dollars (\$100,000), or*
39 *against the facility until the resident is readmitted. Penalties*
40 *collected pursuant to this paragraph shall be deposited into the*

1 State Health Facilities Citation Penalties Account created pursuant
2 to Section 1417.2. The department shall request that the Attorney
3 General seek injunctive relief to enforce the appeal decision and
4 damages in the same manner as provided for in Chapter 5
5 (commencing with Section 17200) of Part 2 of Division 7 of the
6 Business and Professions Code. If the Attorney General prevails,
7 the facility shall be liable for costs and attorney's fees.

8 (A) The department may withhold or deduct any Medi-Cal
9 reimbursement payments to the facility to collect the civil penalties
10 assessed pursuant to this paragraph. If any penalty assessed under
11 this paragraph remains unpaid 60 days after payment is due, the
12 department may assess a penalty equal to 50 percent of the unpaid
13 penalty amount and may seek to delay the renewal of the facility's
14 license.

15 (B) Notwithstanding the rulemaking provisions of Chapter 3.5
16 (commencing with Section 11340) of Part 1 of Division 3 of Title
17 2 of the Government Code, or any other provision of law, the
18 department may implement this paragraph, in whole or in part, by
19 means of letters, provider bulletins, or other similar instructions
20 without taking regulatory action.

21 (C) If the facility is granted a writ of mandate pursuant to
22 Section 1094.5 of the Code of Civil Procedure, it shall not be liable
23 for the civil penalties authorized by this paragraph.

24 (i) Effective July 1, 2007, Sections 483.10, 483.12, 483.13, and
25 483.15 of Title 42 of the Code of Federal Regulations in effect on
26 July 1, 2006, shall apply to each skilled nursing facility and
27 intermediate care facility, regardless of a resident's payment source
28 or the Medi-Cal or Medicare certification status of the skilled
29 nursing facility or intermediate care facility in which the resident
30 resides, except that a noncertified facility is not obligated to provide
31 notice of Medicaid or Medicare benefits, covered services, or
32 eligibility procedures.